

REMARKS

No Claims have been amended.

Claims 1-5, 7-12, and 14-24 are currently pending in this application.

Claims 1, 4, 9, 16, and 20 are in independent format.

1. Species Election

Following Applicant's election of Species A (Figs. 1 and 2) in the previous Office Action Response, the Examiner is now requiring restriction between the following three inventions under 35 U.S.C. § 121:

- I. Claims 1-3 and 16-19, drawn to a method for discharging a reduced smoke device, classified in class 102, subclass 357.
- II. Claims 4-5, 7-8, and 15, drawn to a method of assembling a reduced smoke pyrotechnic device, classified in class 86, subclass 20.1.
- III. Claims 9-12, 14, and 20-24 drawn to a reduced smoke pyrotechnic device, classified in class 102, subclass 360.

As set forth below, Applicant respectfully traverses the restriction on the ground that the species are not patentably distinct. In the event Applicants' arguments are not deemed persuasive, Applicant hereby elects Group III, comprising Claims 9-12, 14, and 20-24.

The species of the claimed invention as set forth by the Examiner are not patentably distinct.

With respect to Inventions II and III, the Examiner states that these are related as process of making and product made. The Examiner's position is that the product, a

reduced smoke pyrotechnic device, could be made by a materially different process such as assembly as a unitary integral structure.

However, the compete *product as claimed* cannot be made in a unitary integral structure as contended by the Examiner, for the simple reason that various required components of the product have different physical properties. Accordingly, it is not clear what components the Examiner is contending could be assembled as a unitary integral structure. The various pyrotechnic components, such as the propellant, composition, and ignition source cannot be unitary components, due to their different ignition properties. That leaves the enclosed base, launch tube, and sealing member. However, formation of these elements as a unitary structure is not a *materially different process* as required by MPEP 806.05(f). Rather, this is specifically described as a possible embodiment of the present invention at Para. [0026], wherein it states that “those of ordinary skill in the art will recognize that the enclosed base 104 may optionally be constructed integrally with the launch tube or barrel 102, or coupled thereto in a variety of different manners ...” Applicant’s use of the term “coupled” does not require the components be separate from one another, as components which are integral can be considered to be coupled.

Accordingly, the Examiner is respectfully requested to provide a viable alternative process or to withdraw the restriction requirement with respect to at least Inventions II and III (MPEP 806.05(f)).

With respect to Inventions III and I, the Examiner states that these are related as product and process of use, and that the product, a reduced smoke pyrotechnic device, could be used absent the step of propagating flame over at least one surface of a pyrotechnic composition and/or absent the step of delaying ignition of the reduced smoke pyrotechnic propellant after ignition of the pyrotechnic element.

In the instant case, the product cannot be used with a materially different process than that set forth. Smokeless or reduced smoke propellants, such as nitrocellulose (as contrasted with black-powder propellants) combust at relatively low temperatures, and lack sufficient heat of combustion to ignite a propelled component, pyrotechnic compositions or fuses on aerial shells (See: Para. [0006]). Accordingly, if a surface of the pyrotechnic composition (such as a exterior surface or fuse) is not ignited prior to launch, and/or the ignition of the reduced smoke pyrotechnic propellant not delayed until after ignition of the pyrotechnic element, there will be insufficient thermal energy within the device to ignite the pyrotechnic element as it is launched by the pyrotechnic propellant, and as such, the pyrotechnic display device will not function as intended, *i.e. no ignited pyrotechnic element will be discharged from the device*. The product is a pyrotechnic display device, not a gun, and as such, requires that the discharged pyrotechnic composition be ignited to provide a display.

Accordingly, the Examiner is respectfully requested to provide a viable alternative use for the product or to withdraw the restriction requirement with respect to at least Inventions III and I (MPEP 806.05(h)).

2. Conclusion

Based on the foregoing, the withdrawal of the restrictions and examination and/or allowance of all pending claims is requested.

If for any reason the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to contact the undersigned attorney for the purpose of arranging such an interview.

Respectfully submitted,



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